

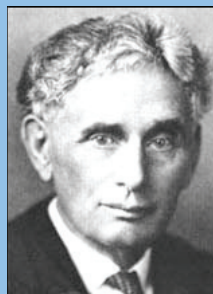
Liberty Under Law

SEPARATE BRANCHES, BALANCED POWERS

Law Day
May 1 2006



“The doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power.” *Justice Louis Brandeis*



Law Day



Jon Meade Huntsman, Jr. Governor Declaration

Whereas, Law Day is a celebration of our nation’s great heritage of liberty, justice, and equality under law;

Whereas, our nation’s Founders created a doctrine of separation of powers among the three branches of government—executive, legislative, and judicial;

Whereas, in an effort to balance any accumulation of power, our nation’s Founders included a system of checks and balances in the Constitution, and this system ensures that each branch serves as a constraint on, and is constrained by, the powers of other branches; and

Whereas, our system of separation of powers and checks and balances stands as a model for other nations of the world;

Now, Therefore, I, Jon M. Huntsman, Jr., Governor of the State of Utah, do hereby declare Monday, May 1, 2006, as

Law Day

Jon M. Huntsman, Jr.
Governor

LAW DAY FACTS

What is Law Day?

Law Day is a national day set aside to celebrate the rule of law. Law Day underscores how law and the legal process have contributed to the freedoms that all Americans share.

When is Law Day celebrated?

May 1 is the official date, however, Law Day is often celebrated throughout May.

How is Law Day celebrated?

Law Day programs are designed to help people understand how law insures our freedom and how our legal system strives to achieve justice. Law Day is celebrated in schools across the country and in community programs.



What is this year’s Law Day theme?

“Liberty Under Law: Separate Branches, Balanced Powers.” It is important that all Americans understand that the Founding Fathers created a government of separate and balanced powers. The Law Day theme focuses on the separate branches of government: the judiciary, the legislature, and the executive branch working separately but together for the common good.

SEPARATION OF POWERS AND THE U.S. CONSTITUTION

★ Separation of powers is the idea that a government functions best when its powers are not concentrated in a single authority, but are divided among different branches.

★ The United States was the first nation to formalize separation of powers among the branches in a written constitution.

★ Lawyers and philosophers in the seventeenth and eighteenth centuries defined the three branches of government and their respective powers: The legislative branch has the power to make the law; the executive branch has the power to enforce the law; the judicial branch has the power to interpret the law.

★ The first three articles of the Constitution define the powers given to the three branches. Article I defines the Congress, Article II defines the executive branch, and Article III defines the judiciary.

★ The Founders created a system that both separated and blended powers so that each branch serves as a check and balance on the powers of the others. For example, the executive can veto legislation passed by Congress, and the judiciary can review the constitutionality of legislation if it is challenged in court.

Separation of Powers—The Judicial Branch

In *The Federalist Papers*, Alexander Hamilton described the judiciary as the least powerful branch. The judiciary’s independence from political interference by the legislature or the executive branch is protected in the Constitution by life tenure during good behavior and a guaranteed salary.

The judiciary’s power to review the constitutionality of executive actions or laws passed by Congress is called judicial review. This power was first used by the Supreme Court in *Marbury v. Madison* (1803). The judiciary’s power is limited to the “cases and controversies” brought before the court.

There are numerous constraints within the judiciary on the power of individual judges:

- Judges must explain their decisions in written opinions.
- Judges follow the precedents established by the decisions of higher courts.
- Judges’ decisions are subject to review by courts of appeals.

The executive and legislative branches each have powers that check and balance the judiciary.

- Judges nominated by the President—and confirmed by the Senate—staff the federal courts.
- The courts rely upon the executive branch for enforcement of their decisions.
- On the federal level, Congress has control over the judiciary’s budget.

— On the federal level, Congress has the power to impeach federal judges who misbehave in office.

— Congress may begin the process of amending the Constitution if it disagrees with the judiciary’s interpretation of the Constitution.

Separation of Powers—The Legislative Branch

The Constitution gives Congress numerous powers, including the following:

- Power over the budget, including the authority to raise taxes, borrow money, and spend money
- Power to declare war and to raise and support military forces
- Power to regulate immigration, the mail, patents and copyrights, and commerce between the states and with foreign countries
- Power to establish federal courts below the United States Supreme Court

In addition, the Constitution also provides that Congress has the power to pass any laws that are “necessary and proper” to give effect to its named powers. The Constitution divides legislative power in the Congress between the House of Representatives and the Senate. Both Houses must agree on proposed legislation before it becomes law.

Checks and balances on the powers of Congress include the following:

- The President’s veto power on proposed legislation (A two-thirds majority of both the House and Senate is required to override a veto.)
- The Supreme Court’s power to review the constitutionality of a law if it is challenged in a case brought before the Court

Separation of Powers—The Executive Branch

Constitutional powers granted to the executive branch include the following:

— Oversight of federal agencies that implement laws passed by Congress (these agencies employ more than 4 million people).

— Power as Commander in Chief of the armed forces

— Power to make treaties, nominate judges to the federal judiciary, and appoint officers of the government, subject to the advice and consent of the Senate

— Power to pardon individuals convicted of federal crimes

The President was the equivalent of the monarchs who ruled as heads of state for most European countries at the time the Constitution was drafted. Unlike those monarchs, however, the President is elected to office and serves only for a limited term.

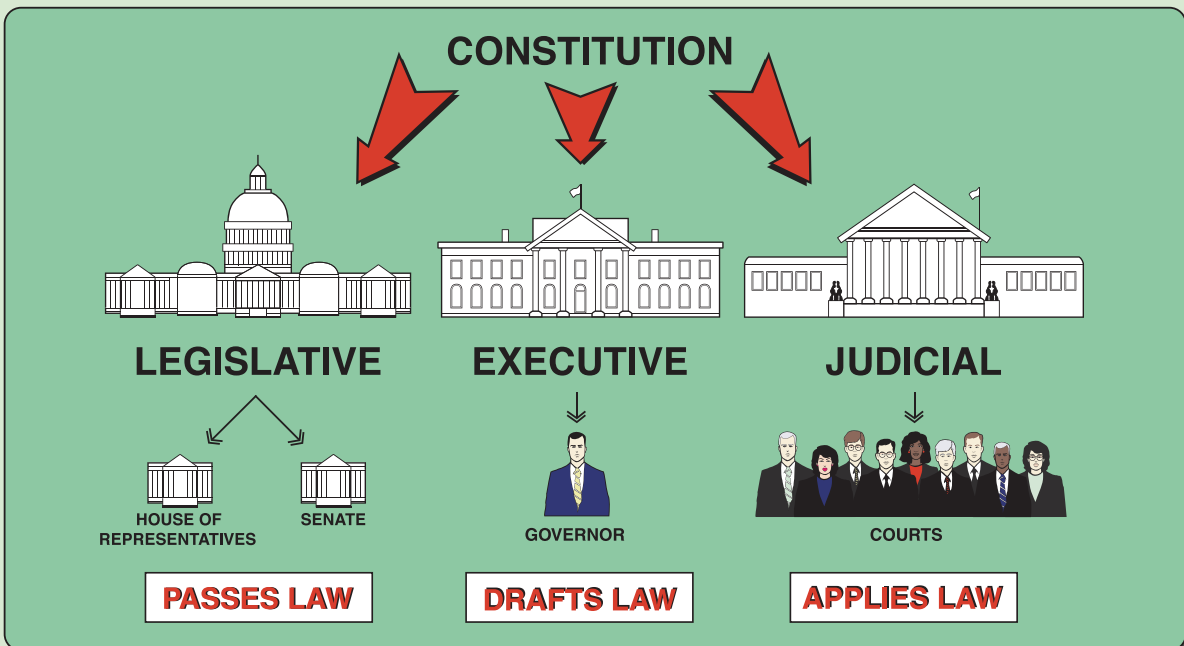
Among the checks and balances on executive power include the following:

- The Senate’s power to ratify treaties the President has signed and to consent to the President’s nominees for federal judgeships and other government positions
- The power of Congress to impeach and convict the President for “treason, bribery, or other high crimes and misdemeanors”
- The federal judiciary’s power to declare executive actions unconstitutional if they are challenged in court

Separation of Powers—in Other Systems

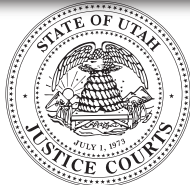
Separation of powers is a hallmark of most democratic governments, but the balance of powers among branches can differ in different political systems.

Other institutions outside government also serve as checks and balances on the powers of the executive, the legislature, and the judiciary. These include a free press that can investigate and report on government actions, non-governmental organizations that advocate for different interests, and the power of the people in whom government authority ultimately rests.



Visit the Utah State Courts’ website at www.utcourts.gov

The Law Day supplement was produced by the Utah State Courts with the support of these underwriters:



VanCott



Utah State Bar



Young Lawyers Division
OF THE UTAH STATE BAR



Examples of Jurisdiction in the Federal and State Courts

State Courts

- Crimes under state legislation
- State constitutional issues and cases involving state laws or regulations
- Family law issues
- Real property issues
- Landlord and tenant disputes
- Most private contract disputes (except those resolved under bankruptcy law)
- Most issues involving the regulation of trades and professions
- Most professional malpractice issues
- Most issues involving the internal governance of business associations such as partnerships and corporations
- Most personal injury lawsuits
- Most workers' injury claims
- Probate and inheritance matters
- Most traffic violations and registration of motor vehicles

Federal Courts

- Crimes under statutes enacted by Congress
- Most cases involving federal laws or regulations (for example: tax, Social Security, broadcasting, civil rights)
- Matters involving interstate and international commerce, including airline and railroad regulation
- Cases involving securities and commodities regulation, including takeovers of publicly held corporations
- Admiralty cases
- International trade law matters
- Patent, copyright, and other intellectual property issues
- Cases involving rights under treaties, foreign states, and foreign nationals
- State law disputes when "diversity of citizenship" exists
- Bankruptcy matters
- Disputes between states
- Habeas corpus actions
- Traffic violations and other misdemeanors occurring on certain federal property

State or Federal Courts

- Crimes punishable under both federal or state law
- Federal constitutional issues
- Certain civil rights claims
- "Class action" cases
- Environmental regulations
- Certain disputes involving federal law

The system of constitutional democracy created by the United States embodies a unique and singularly successful system for preserving majority rule while protecting individual and minority rights. That system is described by the phrase "separation of powers," the theme of 2006 Law Day: "Liberty Under Law: Separate Branches, Balanced Powers." Our federal constitution allocates governmental powers first between the state and federal governments, and then between the three branches of the national government: the legislative, the executive, and the judicial. Each plays a critical role in preserving "liberty under law."

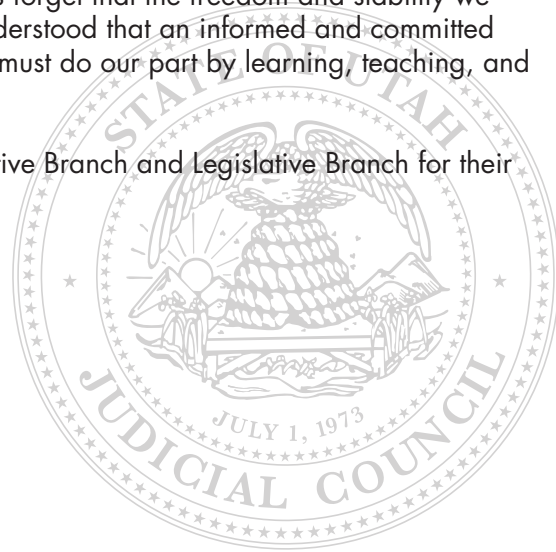
When the American Bar Association commissioned a nationwide survey recently to assess public understanding of these constitutional concepts, fewer than half of the respondents could explain separation of powers and only 56 percent correctly identified the three branches of governments. Only 60 percent showed an accurate understanding of the role of the judiciary.

Americans cherish our national heritage, but we sometimes forget that the freedom and stability we take for granted are fragile. The founders of this nation understood that an informed and committed citizenry would be absolutely necessary to keep them: we must do our part by learning, teaching, and understanding the law that keeps us free.

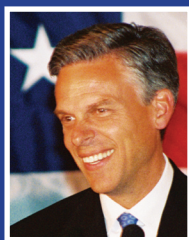
In closing, I'd like to express my appreciation to the Executive Branch and Legislative Branch for their commitment to and support of our state's court system.

Sincerely,

Honorable Christine M. Durham
Chief Justice, Utah Supreme Court



To quote Winston Churchill, "No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of Government except all those others that have been tried from time to time."



The theme of Law Day this year, "Liberty Under Law: Separate Branches, Balanced Powers" collects all that is imperative to our government and showcases it. I appreciate the Utah Bar Association and Chief Justice Durham for inviting me to participate in the Law Day activities and in celebrating our form of government.

Having three separate and balanced branches of government is an essential part of our democratic heritage that we all enjoy. People in many parts of the world do not enjoy the freedoms that we experience here in the United States. It is important for us to attribute our freedoms to our balanced system of government.

There is a natural tension that is built into our government among the three branches because each is charged with the duty to serve the public to the best of its abilities. Each branch holds different responsibilities and tools, but each branch is held accountable to the public.

It is the great responsibility of the citizens of this country and our State to understand and honor the form of government set up to serve each of us. Continuous checks and balances built into our government are vitally important for the health and stability of our society.

I am honored to serve the people of Utah as Governor of the greatest State in America and thank those public servants in each branch for their time and service.

Sincerely,



Jon M. Huntsman, Jr.
Governor

As leaders of Utah's legislative branch, we encourage you to reflect on this year's Law Day theme, "Liberty Under Law: Separate Branches, Balanced Powers."

This theme reminds us that our respect for the rule of law, and our faithfulness to the Utah and U.S. Constitutions—including the separation of government powers into three distinct branches—preserves our liberty under law.

James Madison wrote, "The accumulation of all powers—legislative, executive, and judiciary—in the same hands . . . may justly be pronounced the very definition of tyranny." From his day to ours, the wisdom of Madison's words has been proven countless times as each branch has preserved and protected our liberties by exercising its lawful authority.

We pledge to preserve liberty for all Utahns by fulfilling our constitutional role in the democratic process. During this election year, we urge all Utah citizens to participate in the political process. By exercising the right to vote, citizens act as the final check on power in a democratic system. On Law Day we hope that all Utahns will reflect on the liberties enjoyed by citizens of these United States because of our unique system of government, including its separation into three branches.

Sincerely,

John L. Valentine, President
Utah State Senate



Greg J. Curtis, Speaker
Utah House of Representatives



Collaboration in the Court: Community Outreach in the U.S. District Court for Utah and Utah State Courts

In our nation's history, it has been the courts that have existed at the forefront of most social change—segregation, abortion, and capital punishment are excellent examples. It has been the members and officers of the courts who have been the proponents of building many of the primary means to solve problems. It is for this reason, as well as an abiding respect for the rule of law, that the staff and the Judiciary of the U.S. District Court for the District of Utah work together in a community outreach program.

We hope that from our efforts, the public can meet people who work in the court system on a daily basis and can reach an understanding about the role that community members play in the success of our courts. Further, members of the community of all ages and backgrounds should have the opportunity to ask questions and learn about the workings of the federal court.

The U.S. District Court for the District of Utah offers many facets to its community outreach program. The basic elements of the program include:

- ★ *Tours of the Frank E. Moss U.S. Courthouse, including the observation of sessions of Court.*
- ★ *Visits with staff from the Clerk's Office of the District Court, the U.S. Probation and Pretrial Services Office, the U.S. Marshals, and the Judiciary.*
- ★ *Question-and-answer sessions with the judiciary.*
- ★ *Lessons on the U.S. Courts, the District of Utah, the U.S. Constitution, jury duty, the interaction of three branches of government in the Courts, and ADR/mediation.*
- ★ *Mock trials and mock mediations for students.*

For additional information, please visit www.utd.uscourts.gov.

Utah State Court Community Outreach Opportunities

The Utah State Courts have a variety of resources to inform students and the public about the courts. Following are a few ways to learn more about the court system:

Curriculum: A manual for teachers and students titled "Your Day in Court," is available on the Utah State Courts' website and is targeted to elementary and secondary school students. The manual—produced by Utah Law-Related Education Project—includes answers to frequently asked questions, the trial process, crimes and punishments, and courthouse behavior.

Court tours: Utah has more than 40 courthouses. Court tours are an effective way for students to see first hand how the judiciary operates. With advance notice, students can often observe a court and see attorneys arguing their case.

Presentations: Judges and court executives are available to speak to students and community groups on a variety of court-related topics.

Mock trials: A fun, hands-on way for students to learn about the law first-hand is through a mock trial. A judge presides over a fictional case in a mock trial such as "The Big Bad Wolf v. The Three Little Pigs," "The Three Bears v. Goldilocks," or actual cases for older age groups, while students play the roles of attorneys, defendants, witnesses, and jurors.

For more information, go to www.utcourts.gov and click on Education Resources, which is located under the General Information heading.

The mission of the Utah State Courts is to provide an open, fair, efficient, and independent system for the advancement of justice under the law.